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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/077,997 | 02/20/2002 | Warren Wallo | JBP0584 | 3696 |

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EXAMINER

STREGE, JOHN B

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2625

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,997

Applicant(s)

WALLO ET AL.

Examiner

John B. Strege

Art Unit

2625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>12/27/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/27/05 has been entered.

Response to Amendments

2. The amendment received 12/12/05 has been entered in full.

DETAILED ACTION

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aubert et al. USPN 4,670,781 (hereinafter "Aubert") in view of JP 08100316A (hereinafter abbreviated JP'316), further in view of *Minolta and MetaCreations Introduce Ground-Breaking Instant 3D Image Capture Device: the 3D 1500* (published 11/15/99, hereinafter "the Minolta article"), and further in view of the Applicant's statement regarding the Minolta 3D 1500 (page 6, lines 20-24 of the specification).

Claim 1 discloses, “a method for measuring changes in a portion of a human body including: obtaining a first three-dimensional image of the portion of a human body; treating the portion of a human body to create changes therein; obtaining a second three-dimensional image of the portion of a human body so treated; overlaying the first three-dimensional image and the second three-dimensional image; and comparing the first and second images to measure changes in the portion of a human body.”

In figure 1 Aubert discloses a process for appreciation of variations with respect to time of characteristics, particularly dimensions or coloration or other characteristics, of a zone of or the whole of a person (col. 1 lines 5-11). Such an appreciation of dimensional characteristics arise when following up the effects of slimming products, or of treatments intended to modify the figure of a person (col. 1 lines 11-15). The process involves taking a first image of the zone or the whole of the person using a video camera, taking a second image of the zone or the whole of the person at a later time after treatment, and measuring the first and second images using an image analyzer (paragraph bridging cols. 1-2 and col. 2 lines 26-28). Specifically the image analyzer makes it possible to view the two images superposed (overlapping) and then image comparison, differences display, and differences measurement will occur (col. 5 line 61 – col. 6 line 5, overlapping seen in figure 1 numerals 10-12).

Aubert does not disclose that the images obtained are three-dimensional. However Aubert discloses carrying out a three-dimensional analysis by using 4 different viewpoints (col. 4 lines 18-24 and 43-44).

JP'316 discloses a system where three-dimensional images of a body are obtained and the images are aligned to facilitate comparison of body types (taken from the English abstract).

Aubert and JP'316 are analogous art because they are from the same field of endeavor of analyzing the human body.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Aubert to obtain three-dimensional images instead of carrying out the analysis from four separate viewpoints. The motivation for doing so is that it would simplify the invention.

Neither Aubert nor JP'316 explicitly disclose that the optical profiling instrument generates two flashes in a single shot, thereby enabling the production of the three-dimensional image from one shot.

The Minolta article discloses a three-dimensional image taking camera (Minolta 3D 1500) that enables the quick and easy creation of photo-realistic 3D images that gives high quality images at an affordable price (first paragraph). To capture images, the user simply aim at the object and push the shutter release button and the camera does the rest (first paragraph on second page). According to the Applicant, the 3D 1500 emits two flashes in a single shot (page 6, lines 20-24).

JP'316, the Minolta article, and the Applicant's statement regarding the Minolta 3D 1500 are all analogous art because they are all from the same field of endeavor of 3D imaging.

At the time of the invention it would have been obvious to one of ordinary skill in the art to use the Minolta 3D 1500 camera to obtain the images of the subject with the motivation that it enables the quick and easy creation of photo-realistic 3D images that gives high quality images at an affordable price. Thus it would have been obvious to one of ordinary skill in the art to combine Aubert, JP'316, the Minolta article, and the Applicant's statement regarding the Minolta 3D 1500 to obtain the invention as specified in claim 1.

Regarding claims 2 and 4, as seen in figure 1 of Aubert (numerals 10-12) the measurement is a visualization utilizing a digital picture frame.

Regarding claims 3, and 5-6 it is well known to use lenticular printing, a personal data assistant, and a portable DVD player to accomplish visualization and thus the examiner declares Official Notice that it would be obvious to do so. The motivation for doing so is that it would allow the customer a convenient way of viewing the progress of their treatment.

Contact Information

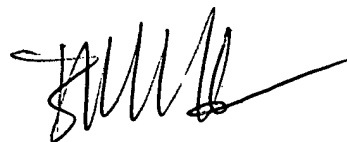
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Strege whose telephone number is (571) 272-7457. The examiner can normally be reached on Monday-Friday between the hours of 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2625

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS


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